

By: ~~SHAPLEIGH~~

S.B. No. 1147

A BILL TO BE ENTITLED

AN ACT

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes recording the observations, thoughts, or impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with conducting contested case hearings; and

(4) drafts of orders made in connection with conducting alternative dispute resolution procedures.

SECTION 2. Section 2003.021, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.

1 SECTION 3. Section 2003.022, Government Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) The appointment of the chief administrative law judge
4 shall be made without regard to the race, color, disability, sex,
5 religion, age, or national origin of the appointee.

6 SECTION 4. Subchapter B, Chapter 2003, Government Code, is
7 amended by adding Section 2003.0221 to read as follows:

8 Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE.
9 It is a ground for removal from the position of chief administrative
10 law judge that an appointee:

11 (1) does not have at the time of taking office the
12 qualifications required by Section 2003.022(b);

13 (2) does not maintain during service as chief
14 administrative law judge a license to practice law in this state;

15 (3) is ineligible to hold the position under Section
16 2003.0225;

17 (4) cannot, because of illness or disability,
18 discharge the appointee's duties for a substantial part of the
19 appointee's term; or

20 (5) engages in the practice of law in violation of
21 Section 2003.022(c).

22 SECTION 5. Subchapter B, Chapter 2003, Government Code, is
23 amended by adding Sections 2003.0225 and 2003.0226 to read as
24 follows:

25 Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section,
26 "Texas trade association" means a cooperative and voluntarily
27 joined statewide association of business or professional

1 competitors in this state designed to assist its members and its
2 industry or profession in dealing with mutual business or
3 professional problems and in promoting their common interest.

4 (b) A person may not hold the position of chief
5 administrative law judge and may not be employed by the office in a
6 "bona fide executive, administrative, or professional capacity,"
7 as that phrase is used for purposes of establishing an exemption to
8 the overtime provisions of the federal Fair Labor Standards Act of
9 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
10 amendments, if:

11 (1) the person is an officer, employee, or paid
12 consultant of a Texas trade association in any field regulated by an
13 agency for which the office is required to conduct administrative
14 hearings; or

15 (2) the person's spouse is an officer, manager, or paid
16 consultant of a Texas trade association in any field regulated by an
17 agency for which the office is required to conduct administrative
18 hearings.

19 (c) A person may not hold the position of chief
20 administrative law judge or act as the general counsel to the chief
21 administrative law judge or the office if the person is required to
22 register as a lobbyist under Chapter 305 because of the person's
23 activities for compensation on behalf of a profession related to
24 the operation of the office, including a profession that is
25 licensed by an agency for which the office is required to conduct
26 administrative hearings.

27 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR

1 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
2 judge or the chief administrative law judge's designee shall
3 provide to office employees, as often as necessary, information
4 regarding the requirements for employment under this chapter,
5 including information regarding a person's responsibilities under
6 applicable laws relating to standards of conduct for state
7 employees.

8 SECTION 6. Section 2003.023, Government Code, is amended to
9 read as follows:

10 Sec. 2003.023. SUNSET PROVISION. The State Office of
11 Administrative Hearings is subject to review under Chapter 325
12 (Texas Sunset Act), but is not abolished under that chapter. The
13 office shall be reviewed during the periods in which state agencies
14 abolished in 2015 [2003] and every 12th year after 2015 [2003] are
15 reviewed.

16 SECTION 7. Section 2003.024, Government Code, is amended to
17 read as follows:

18 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
19 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
20 to the office during any of the three most recent state fiscal years
21 for which complete information about the agency's hourly usage is
22 available and the costs to the office of conducting hearings and
23 alternative dispute resolution procedures for the [a] state agency
24 [~~that refers matters to the office~~] are not to be [otherwise] paid
25 by appropriations to the office during a state fiscal biennium, the
26 office and the agency shall enter into an interagency contract for
27 the biennium under which the referring agency pays the office, at

1 the start of each fiscal year of the biennium, a lump-sum amount to
2 cover the costs of conducting all hearings and procedures during
3 the fiscal year [a hearing or procedure]. The lump-sum amount
4 [costs] paid to the office under the contract must be based on:

5 (1) an hourly rate that is set by the office[. —The
6 office shall set the hourly rate for a biennium] in time for the
7 rate to be reviewed by the legislature as part of the legislature's
8 review of the office's legislative appropriations request for the
9 biennium; and

10 (2) the anticipated hourly usage of the office's
11 services by the referring agency for each fiscal year of the
12 biennium, as estimated by the office under Subsection (a-1).

13 (a-1) Before the beginning of each state fiscal biennium,
14 the office shall estimate for each fiscal year of the biennium the
15 anticipated hourly usage for each state agency that referred
16 matters to the office during any of the three most recent state
17 fiscal years for which complete information about the agency's
18 hourly usage is available. The office shall estimate an agency's
19 anticipated hourly usage by evaluating:

20 (1) the number of hours spent by the office conducting
21 hearings or alternative dispute resolution procedures for the state
22 agency during the three most recent state fiscal years for which
23 complete information about the agency's hourly usage is available;
24 and

25 (2) any other relevant information, including
26 information provided to the office by the state agency, that
27 suggests an anticipated increase or decrease in the agency's hourly

1 usage of the office's services during the state fiscal biennium, as
2 compared to past usage.

3 (a-2) If a state agency did not refer matters to the office
4 during any of the three state fiscal years preceding a state fiscal
5 biennium for which complete information about the agency's hourly
6 usage would have been available and did not provide information to
7 the office sufficient for the office to reasonably and timely
8 estimate anticipated usage and enter into a contract with the
9 agency before the start of the state fiscal biennium, and the costs
10 to the office of conducting hearings and alternative dispute
11 resolution procedures for the state agency are not paid by
12 appropriations to the office for the state fiscal biennium, the
13 referring agency shall pay the office the costs of conducting
14 hearings or procedures for the agency based on the hourly rate that
15 is set by the office under Subsection (a) and on the agency's actual
16 usage of the office's services.

17 (b) If the costs to the office of conducting hearings and
18 alternative dispute resolution procedures for a state agency that
19 refers matters to the office are anticipated to be [otherwise] paid
20 by a lump-sum appropriation [appropriations] to the office for
21 [during] a state fiscal biennium, the office shall timely provide
22 to the legislature the information described by Subsection (c)
23 [office and the agency shall enter into an interagency contract for
24 each state fiscal year during the biennium under which the
25 referring agency pays the office the costs for the number of hours
26 spent by the office conducting hearings or alternative dispute
27 resolution procedures for the agency during the fiscal year that

1 ~~exceeds by 10 percent or more the number of hours spent by the~~
2 ~~office conducting hearings or alternative dispute resolution~~
3 ~~procedures for the agency during the state fiscal year that ended~~
4 ~~August 31, 1998. The costs paid under the contract must be based on~~
5 ~~an hourly rate that is set by the office. The office shall set the~~
6 ~~hourly rate for a biennium in time for the rate to be reviewed by the~~
7 ~~legislature as part of the legislature's review of the office's~~
8 ~~legislative appropriations request for the biennium].~~

9 (c) Each state fiscal biennium, the office as part of its
10 legislative appropriation request shall file:

11 (1) information, as estimated under Subsection (a-1),
12 related to the anticipated hourly usage of each state agency that
13 refers matters to the office for which the costs of hearings and
14 alternative dispute resolution procedures are anticipated to be
15 paid by appropriations to the office; and

16 (2) an estimate of its hourly costs in conducting each
17 type of hearing or dispute resolution procedure. The office shall
18 estimate the hourly cost based on the average cost per hour during
19 the preceding state fiscal year of:

20 (A) [(1)] the salaries of its administrative law
21 judges;

22 (B) [(2)] the travel expenses, hearing costs,
23 and telephone charges directly related to the conduct of a hearing
24 or procedure; and

25 (C) [(3)] the administrative costs of the
26 office, including docketing costs and the administrative costs of
27 the division of the office that conducts the hearing or procedure.

1 (d) This section does not apply to hearings conducted:

2 (1) by the natural resource conservation division or
3 the utility division; or

4 (2) under the administrative license revocation
5 program.

6 SECTION 8. Section 2003.050, Government Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) Rules adopted by the chief administrative law judge
9 under this section shall specify procedures to permit a witness to
10 testify over the telephone at a hearing conducted by the office.
11 The rules must require the consent of all parties to the contested
12 case or other matter before a witness is permitted to testify over
13 the telephone and must include procedures for verification of the
14 identity of the witness by a third party.

15 SECTION 9. Subchapter C, Chapter 2003, Government Code, is
16 amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055,
17 and 2003.056 to read as follows:

18 Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office
19 shall maintain a file on each written complaint filed with the
20 office. The file must include:

- 21 (1) the name of the person who filed the complaint;
22 (2) the date the complaint is received by the office;
23 (3) the subject matter of the complaint;
24 (4) the name of each person contacted in relation to
25 the complaint;
26 (5) a summary of the results of the review or
27 investigation of the complaint; and

1 (6) an explanation of the reason the file was closed,
2 if the office closed the file without taking action other than to
3 investigate the complaint.

4 (b) The office shall provide to the person filing the
5 complaint and to each person who is a subject of the complaint a
6 copy of the office's policies and procedures relating to complaint
7 investigation and resolution.

8 (c) The office, at least quarterly until final disposition
9 of the complaint, shall notify the person filing the complaint and
10 each person who is a subject of the complaint of the status of the
11 investigation unless the notice would jeopardize an undercover
12 investigation.

13 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
14 The chief administrative law judge or the chief administrative law
15 judge's designee shall prepare and maintain a written policy
16 statement that implements a program of equal employment opportunity
17 to ensure that all personnel decisions are made without regard to
18 race, color, disability, sex, religion, age, or national origin.

19 (b) The policy statement must include:

20 (1) personnel policies, including policies relating
21 to recruitment, evaluation, selection, training, and promotion of
22 personnel, that show the intent of the office to avoid the unlawful
23 employment practices described by Chapter 21, Labor Code; and

24 (2) an analysis of the extent to which the composition
25 of the office's personnel is in accordance with state and federal
26 law and a description of reasonable methods to achieve compliance
27 with state and federal law.

1 (c) The policy statement must:

2 (1) be updated annually;

3 (2) be reviewed by the state Commission on Human
4 Rights for compliance with Subsection (b)(1); and

5 (3) be filed with the governor's office.

6 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
7 administrative law judge or the chief administrative law judge's
8 designee shall provide to office employees information and training
9 on the benefits and methods of participation in the State Employee
10 Incentive Program.

11 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
12 administrative law judge shall develop and implement a policy
13 requiring the chief administrative law judge and office employees
14 to research and propose appropriate technological solutions to
15 improve the office's ability to perform its functions. The
16 technological solutions must:

17 (1) ensure that the public is able to easily find
18 information about the office on the Internet;

19 (2) ensure that persons who want to use the office's
20 services are able to:

21 (A) interact with the office through the
22 Internet; and

23 (B) access any service that can be provided
24 effectively through the Internet; and

25 (3) be cost-effective and developed through the
26 office's planning processes.

27 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The

1 chief administrative law judge shall develop and implement a policy
2 to encourage the use of alternative dispute resolution procedures
3 where appropriate to assist in the internal and external resolution
4 of disputes within the office's jurisdiction.

5 SECTION 10. Section 51.305, Occupations Code, is amended to
6 read as follows:

7 Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
8 respondent requests a hearing, the hearing shall be conducted by
9 the State Office of Administrative Hearings [~~department shall set a~~
10 ~~hearing and give written notice of the hearing to the respondent~~].

11 (b) The State Office of Administrative Hearings shall
12 consider the department's applicable substantive rules and
13 policies when conducting a hearing under this subchapter [~~The~~
14 ~~executive director may employ a hearings officer to conduct the~~
15 ~~hearing~~].

16 (c) An administrative law judge at the State Office of
17 Administrative Hearings [~~The hearings officer~~] shall:

18 (1) make findings of fact and conclusions of law; and

19 (2) promptly issue to the commission a proposal for
20 decision as to the occurrence of the violation and the amount of any
21 proposed administrative penalty.

22 SECTION 11. Section 51.354(a), Occupations Code, is amended
23 to read as follows:

24 (a) A respondent is entitled to a hearing conducted by the
25 State Office of Administrative Hearings if the executive director
26 proposes to deny, suspend, or revoke a license.

27 SECTION 12. Section 1802.203, Occupations Code, is amended

1 of services and planning for future needs, including:

2 (A) an informational training session conducted
3 by the Texas Department of Licensing and Regulation for hearings
4 officers at the State Office of Administrative Hearings; and

5 (B) procedures for forwarding requests for
6 administrative hearings submitted to the Texas Department of
7 Licensing and Regulation to the State Office of Administrative
8 Hearings.

9 SECTION 16. (a) This Act takes effect September 1, 2003.

10 (b) The change in law made by this Act to Section 2003.024,
11 Government Code, applies only in relation to the state fiscal
12 biennium beginning September 1, 2005, and any subsequent state
13 fiscal biennium.

By: Shapleigh S.B. No. 1147
(In the Senate - Filed March 11, 2003; March 17, 2003, read first time and referred to Committee on Government Organization; April 8, 2003, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 8, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1147 By: Wentworth

A BILL TO BE ENTITLED
AN ACT

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes recording the observations, thoughts, or impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with conducting contested case hearings; and

(4) drafts of orders made in connection with conducting alternative dispute resolution procedures.

SECTION 2. Section 2003.021, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.

SECTION 3. Section 2003.022, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended by adding Section 2003.0221 to read as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

SECTION 5. Subchapter B, Chapter 2003, Government Code, is amended by adding Sections 2003.0225 and 2003.0226 to read as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not hold the position of chief administrative law judge and may not be employed by the office in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings.

(c) A person may not hold the position of chief administrative law judge or act as the general counsel to the chief administrative law judge or the office if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the office, including a profession that is licensed by an agency for which the office is required to conduct administrative hearings.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

SECTION 6. Section 2003.023, Government Code, is amended to read as follows:

Sec. 2003.023. SUNSET PROVISION. The State Office of Administrative Hearings is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2015 [2003] and every 12th year after 2015 [2003] are reviewed.

SECTION 7. Section 2003.024, Government Code, is amended to read as follows:

Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) If a state agency referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available and the costs to the office of conducting hearings and alternative dispute resolution procedures for the [a] state agency [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid by appropriations to the office during a state fiscal biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office, at the start of each fiscal year of the biennium, a lump-sum amount to cover the costs of conducting all hearings and procedures during the fiscal year [~~a hearing or procedure~~]. The lump-sum amount [~~costs~~] paid to the office under the contract must be based on:

(1) an hourly rate that is set by the office [~~The office shall set the hourly rate for a biennium~~] in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium; and

(2) the anticipated hourly usage of the office's services by the referring agency for each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

(a-1) Before the beginning of each state fiscal biennium, the office shall estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. The office shall estimate an agency's

3-1 anticipated hourly usage by evaluating:

3-2 (1) the number of hours spent by the office conducting
 3-3 hearings or alternative dispute resolution procedures for the state
 3-4 agency during the three most recent state fiscal years for which
 3-5 complete information about the agency's hourly usage is available;
 3-6 and

3-7 (2) any other relevant information, including
 3-8 information provided to the office by the state agency, that
 3-9 suggests an anticipated increase or decrease in the agency's hourly
 3-10 usage of the office's services during the state fiscal biennium, as
 3-11 compared to past usage.

3-12 (a-2) If a state agency did not refer matters to the office
 3-13 during any of the three state fiscal years preceding a state fiscal
 3-14 biennium for which complete information about the agency's hourly
 3-15 usage would have been available and did not provide information to
 3-16 the office sufficient for the office to reasonably and timely
 3-17 estimate anticipated usage and enter into a contract with the
 3-18 agency before the start of the state fiscal biennium, and the costs
 3-19 to the office of conducting hearings and alternative dispute
 3-20 resolution procedures for the state agency are not paid by
 3-21 appropriations to the office for the state fiscal biennium, the
 3-22 referring agency shall pay the office the costs of conducting
 3-23 hearings or procedures for the agency based on the hourly rate that
 3-24 is set by the office under Subsection (a) and on the agency's actual
 3-25 usage of the office's services.

3-26 (b) If the costs to the office of conducting hearings and
 3-27 alternative dispute resolution procedures for a state agency that
 3-28 refers matters to the office are anticipated to be [otherwise] paid
 3-29 by a lump-sum appropriation [appropriations] to the office for
 3-30 [during] a state fiscal biennium, the office shall timely provide
 3-31 to the legislature the information described by Subsection (c)
 3-32 [office and the agency shall enter into an interagency contract for
 3-33 each state fiscal year during the biennium under which the
 3-34 referring agency pays the office the costs for the number of hours
 3-35 spent by the office conducting hearings or alternative dispute
 3-36 resolution procedures for the agency during the fiscal year that
 3-37 exceeds by 10 percent or more the number of hours spent by the
 3-38 office conducting hearings or alternative dispute resolution
 3-39 procedures for the agency during the state fiscal year that ended
 3-40 August 31, 1998. The costs paid under the contract must be based on
 3-41 an hourly rate that is set by the office. The office shall set the
 3-42 hourly rate for a biennium in time for the rate to be reviewed by the
 3-43 legislature as part of the legislature's review of the office's
 3-44 legislative appropriations request for the biennium].

3-45 (c) Each state fiscal biennium, the office as part of its
 3-46 legislative appropriation request shall file:

3-47 (1) information, as estimated under Subsection (a-1),
 3-48 related to the anticipated hourly usage of each state agency that
 3-49 refers matters to the office for which the costs of hearings and
 3-50 alternative dispute resolution procedures are anticipated to be
 3-51 paid by appropriations to the office; and

3-52 (2) an estimate of its hourly costs in conducting each
 3-53 type of hearing or dispute resolution procedure. The office shall
 3-54 estimate the hourly cost based on the average cost per hour during
 3-55 the preceding state fiscal year of:

3-56 (A) [+1+] the salaries of its administrative law
 3-57 judges;

3-58 (B) [+2+] the travel expenses, hearing costs,
 3-59 and telephone charges directly related to the conduct of a hearing
 3-60 or procedure; and

3-61 (C) [+3+] the administrative costs of the
 3-62 office, including docketing costs and the administrative costs of
 3-63 the division of the office that conducts the hearing or procedure.

3-64 (d) This section does not apply to hearings conducted:

3-65 (1) by the natural resource conservation division or
 3-66 the utility division; or

3-67 (2) under the administrative license revocation
 3-68 program.

3-69 SECTION 8. Section 2003.050, Government Code, is amended by

adding Subsection (c) to read as follows:

(c) The rules of the office regarding the participation of a witness by telephone must include procedures to verify the identity of the witness who is to appear by telephone.

SECTION 9. Subchapter C, Chapter 2003, Government Code, is amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056 to read as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;
 (2) the date the complaint is received by the office;
 (3) the subject matter of the complaint;
 (4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

(a) The chief administrative law judge or the chief administrative law judge's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees information and training on the benefits and methods of participation in the state employee incentive program.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief administrative law judge shall develop and implement a policy requiring the chief administrative law judge and office employees to research and propose appropriate technological solutions to improve the office's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the office on the Internet;

(2) ensure that persons who want to use the office's services are able to:

(A) interact with the office through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the

office's planning processes.

Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The chief administrative law judge shall develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within the office's jurisdiction.

SECTION 10. Section 51.305, Occupations Code, is amended to read as follows:

Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the respondent requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings ~~[department shall set a hearing and give written notice of the hearing to the respondent]~~.

(b) The State Office of Administrative Hearings shall consider the department's applicable substantive rules and policies when conducting a hearing under this subchapter ~~[The executive director may employ a hearings officer to conduct the hearing]~~.

(c) An administrative law judge at the State Office of Administrative Hearings ~~[The hearings officer]~~ shall:

(1) make findings of fact and conclusions of law; and
(2) promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

SECTION 11. Subsection (a), Section 51.354, Occupations Code, is amended to read as follows:

(a) A respondent is entitled to a hearing conducted by the State Office of Administrative Hearings if the executive director proposes to deny, suspend, or revoke a license.

SECTION 12. Section 1802.203, Occupations Code, is amended to read as follows:

Sec. 1802.203. HEARING. ~~[(a)]~~ If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department shall refer the matter to the State Office of Administrative Hearings for a hearing on the disputed claim ~~[department's hearings examiner shall:]~~.

~~[(1) conduct a hearing on the claim in accordance with department rules; and~~

~~[(2) determine the amount owed to the aggrieved party].~~

~~[(b) A hearing on a claim may be conducted at the department's Austin office or at another location as provided by department rule.~~

~~[(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commissioner.]~~

SECTION 13. The heading to Section 1802.253, Occupations Code, is amended to read as follows:

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

SECTION 14. Subsection (a), Section 1802.253, Occupations Code, is amended to read as follows:

(a) Before denying an application for a license or suspending or revoking a license, the commissioner shall:

(1) set the matter for a hearing to be conducted by the State Office of Administrative Hearings; and

(2) before the 30th day before the hearing date, notify the applicant or license holder in writing of:

(A) the charges alleged or the question to be determined at the hearing; and

(B) the date and location of the hearing.

SECTION 15. Subsections (b) and (c), Section 51.354, Occupations Code, are repealed.

SECTION 16. On September 1, 2003:

(1) all functions and activities performed by the Texas Department of Licensing and Regulation that relate to conducting administrative hearings at the department are transferred to the State Office of Administrative Hearings;

(2) two full-time equivalent employee positions are transferred from the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings to provide the

6-1 hearing services described in Sections 51.305, 51.354, 1802.203,
 6-2 and 1802.253, Occupations Code, as amended by this Act. When
 6-3 filling the two full-time equivalent employee positions, the State
 6-4 Office of Administrative Hearings shall give first consideration to
 6-5 an applicant employed as a hearings examiner or administrative
 6-6 technician at the Texas Department of Licensing and Regulation;

6-7 (3) all property, including records, in the custody of
 6-8 the Texas Department of Licensing and Regulation related to
 6-9 providing administrative hearings under the former Sections
 6-10 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
 6-11 the property of the State Office of Administrative Hearings, but
 6-12 stays in the same physical location unless moved in accordance with
 6-13 the plan created under Section 17 of this Act; and

6-14 (4) all funds appropriated by the legislature to the
 6-15 Texas Department of Licensing and Regulation for purposes relating
 6-16 to conducting administrative hearings under the former Sections
 6-17 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are
 6-18 transferred to the State Office of Administrative Hearings.

6-19 SECTION 17. The Texas Department of Licensing and
 6-20 Regulation and the State Office of Administrative Hearings shall
 6-21 establish a transition plan for the transfer described in Section
 6-22 16 of this Act. The plan must include:

6-23 (1) a timetable for any necessary or advisable
 6-24 movement of the physical location of property;

6-25 (2) an inventory of records and other property
 6-26 required to be transferred; and

6-27 (3) a plan for continued support and cooperation the
 6-28 Texas Department of Licensing and Regulation must provide the State
 6-29 Office of Administrative Hearings to ensure an efficient transfer
 6-30 of services and planning for future needs, including:

6-31 (A) an informational training session conducted
 6-32 by the Texas Department of Licensing and Regulation for hearings
 6-33 officers at the State Office of Administrative Hearings; and

6-34 (B) procedures for forwarding requests for
 6-35 administrative hearings submitted to the Texas Department of
 6-36 Licensing and Regulation to the State Office of Administrative
 6-37 Hearings.

6-38 SECTION 18. (a) This Act takes effect September 1, 2003.

6-39 (b) The change in law made by this Act to Section 2003.024,
 6-40 Government Code, applies only in relation to the state fiscal
 6-41 biennium beginning September 1, 2005, and any subsequent state
 6-42 fiscal biennium.

6-43 * * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 1147
By Shapleigh
(Author/Senate Sponsor)
April 8, 2003
(date)

We, your Committee on GOVERNMENT ORGANIZATION, to which was referred the attached measure,
have on April 2, 2003, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed
☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Ellis, Chair	1			
Senator Wentworth, Vice-Chair	1			
Senator Armbrister	1			
Senator Bivins	1			
Senator Brimer			1	
Senator Ratliff	1			
Senator Whitmire	1			
TOTAL VOTES	6	0	1	0

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

[Signature]
COMMITTEE CLERK

Rodney Ellis
CHAIR

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

SB 1147

SENATE COMMITTEE REPORT

Government Organization

March 26, 2003 - 1:00PM

ON: Parsley, Cathleen General Counsel (State Office of Administrative Hearings), Austin, TX
Taylor, Shelia Bailey Chief Administrative Law Judge (State Office of Administrative Hearings), Austin, TX
Walraven, Joe Policy Analyst (Sunset Advisory Commission), Austin, TX

Registering, but not testifying:

ON: Kuntz, William H. Executive Director (Department of Licensing and Regulation), Austin, TX

Providing written testimony:

AGAINST: Whalen, Ken Director of Legislative Affairs (Texas Daily Newspaper Association/Texas Press Association), Austin, TX

April 2, 2003 - 1:00PM

Registering, but not testifying:

AGAINST: McAustin, Todd (Texas Air Conditioning Contractors Association), Austin, TX

ON: Kuntz, Jr., William Executive Director (Texas Department of Licensing and Regulation), Austin, TX
Vasquez, III, Leopoldo Chairman of Commission (Texas Commission of Licensing and Regulation), Austin, TX

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1147
By: Shapleigh
Government Organization
4/7/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

The State Office of Administrative Hearings (SOAH) was created in 1991 to conduct administrative law hearings and alternative dispute resolution proceedings involving Texas state agencies, and other governmental entities, private citizens, and corporations doing business within the state. More than seventy state agencies and local political subdivisions refer cases to SOAH. SOAH is subject to review, but not abolishment, under the Sunset Act. C.S.S.B. 1147 continues SOAH for the standard 12-year period until 2015 and transfers the administrative hearings function of the Texas Department of Licensing and Regulation to SOAH.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 552C, Government Code, by adding Section 552.141, as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that certain working papers of an administrative law judge at the State Office of Administrative Hearings (SOAH) are excepted from the requirements of Section 552.021.

SECTION 2. Amends Section 2003.021, Government Code, by adding Subsection (g), to require SOAH to conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation (TDLR) under Chapter 51, Occupations Code.

SECTION 3. Amends Section 2003.022, Government Code, by adding Subsection (e) to update standard Sunset language requiring the appointment of the chief administrative law judge to be made without regard to certain personal characteristics.

SECTION 4. Amends Chapter 2003B, Government Code, by adding Section 2003.0221, as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. Updates standard Sunset language relating to the grounds for removal of the chief administrative law judge.

SECTION 5. Amends Chapter 2003B, Government Code, by adding Sections 2003.0225 and 2003.0226, as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. Updates standard Sunset language relating to conflicts of interest.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. Updates standard Sunset language requiring information on standards of conduct to be provide to SOAH employees.

SECTION 6. Amends Section 2003.023, Government Code, to continue SOAH for the standard 12-year period until 2015 and require its review every 12th year after 2015.

SECTION 7. Amends Section 2003.024, Government Code, as follows:

Sec. 2003.024. New heading: INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) Eliminates the process for billing agencies for hearing costs and provides instead for up-front payments to SOAH based on agencies' previous usage.

(a-1) Requires SOAH, before the beginning of each state fiscal biennium, to estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. Requires SOAH to estimate an agency's anticipated hourly usage by evaluating certain criteria.

(a-2) Requires the referring agency, if a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, to pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

(b) Makes conforming changes. Deletes current language in text.

(c) Requires SOAH, as part of its legislative appropriation request, each state fiscal biennium, to file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to SOAH. Makes conforming changes.

SECTION 8. Amends Section 2003.050, Government Code, by adding Subsection (c), to require the rules of the office regarding the participation of a witness by telephone to include procedures to verify the identity of the witness who is to appear by telephone.

SECTION 9. Amends Chapter 2003C, Government Code, by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056, as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) Updates standard Sunset language requiring SOAH to maintain a file on complaints.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Updates standard Sunset language requiring the chief administrative law judge or designee to develop an equal opportunity policy.

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. Updates standard Sunset language requiring the chief administrative law judge or designee to provide SOAH employees with information and training on the benefits and methods of participation in the State Employee Incentive Program.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a technology policy.

Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within SOAH's jurisdiction.

SECTION 10. Amends Section 51.305, Occupations Code, as follows:

- (a) Requires the hearing, if the respondent requests a hearing, to be conducted by SOAH.
- (b) Requires SOAH to consider TDLR's applicable substantive rules and policies when conducting a hearing under this subchapter.
- (c) Replaces "hearing officer" with "an administrative law judge at the State Office of Administrative Hearings" in existing text.

SECTION 11. Amends Section 51.354(a), Occupations Code, to make a conforming change.

SECTION 12. Amends Section 1802.203, Occupations Code, to require TDLR, if the amount is disputed by the auctioneer or the aggrieved party, to refer the matter to SOAH for a hearing on the disputed claim.

SECTION 13. Amends the heading to Section 1802.253, Occupations Code, to read as follows:

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

SECTION 14. Amends Section 1802.253 (a), Occupations Code, to add a new requirement before denying an application for a license or suspending or revoking a license.

SECTION 15. Repealer: Sections 51.354 (b) and (c), Occupations Code (Right to Hearing; Administrative Procedure)

SECTION 16. Provides that on September 1, 2003:

- (1) all functions and activities performed by TDLR that relate to conducting administrative hearings at TDLR are transferred to SOAH;
- (2) two full-time equivalent employee positions are transferred from TDLR SOAH to provide the hearing services described in Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, as amended by this Act. Requires SOAH, when filling the two full-time equivalent employee positions, to give first consideration to an applicant employed as a hearings examiner or administrative technician at TDLR;
- (3) all property, including records, in the custody of TDLR related to providing administrative hearings under the former Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, becomes the property of SOAH, but stays in the same physical location unless moved in accordance with the plan created under Section 15 of this Act; and
- (4) all funds appropriated by the legislature to TDLR for purposes relating to conducting administrative hearings under the former Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, are transferred to SOAH.

SECTION 17. Requires TDLR and SOAH to establish a transition plan for the transfer described in Section 14 of this Act. Requires the plan to include certain criteria.

SECTION 18. (a) Effective date: September 1, 2003.

(b) Makes application of Section 2003.024, Government Code, as amended by

this Act prospective to September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

SECTION 8. Deletes proposed Subsection (c) of Section 2003.050, Government Code, and replaces it with a new Subsection (c).

SECTION 13. Creates a new SECTION 13 and renumbers subsequent SECTIONS accordingly.

SECTION 14. Creates a new SECTION 14 and renumbers subsequent SECTIONS accordingly. Makes conforming changes.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings function transferred to the office from the Texas Department of Licensing and Regulation.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 26, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

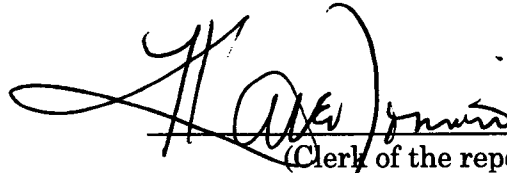
Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 1147, by Shapleigh,
(Bill No.) (Author/Sponsor)
was heard by the Committee on Government Organization on 4/2/03, 2003,
and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.


(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

ADOPTED

APR 16 2003

Atty. Gen.
Secretary of the Senate

By: Shapleigh

S.B. No. 1147

Substitute the following for S.B. No. 1147:

By: *Wentworth*

C.S.S.B. No. 1147

A BILL TO BE ENTITLED

AN ACT

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes recording the observations, thoughts, or impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with conducting contested case hearings; and

(4) drafts of orders made in connection with conducting alternative dispute resolution procedures.

SECTION 2. Section 2003.021, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.

SECTION 3. Section 2003.022, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended by adding Section 2003.0221 to read as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

SECTION 5. Subchapter B, Chapter 2003, Government Code, is amended by adding Sections 2003.0225 and 2003.0226 to read as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or 2/3

1 professional competitors in this state designed to assist its
2 members and its industry or profession in dealing with mutual
3 business or professional problems and in promoting their common
4 interest.

5 (b) A person may not hold the position of chief
6 administrative law judge and may not be employed by the office in a
7 "bona fide executive, administrative, or professional capacity,"
8 as that phrase is used for purposes of establishing an exemption to
9 the overtime provisions of the federal Fair Labor Standards Act of
10 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
11 amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in any field regulated by an
14 agency for which the office is required to conduct administrative
15 hearings; or

16 (2) the person's spouse is an officer, manager, or paid
17 consultant of a Texas trade association in any field regulated by an
18 agency for which the office is required to conduct administrative
19 hearings.

20 (c) A person may not hold the position of chief
21 administrative law judge or act as the general counsel to the chief
22 administrative law judge or the office if the person is required to
23 register as a lobbyist under Chapter 305 because of the person's
24 activities for compensation on behalf of a profession related to
25 the operation of the office, including a profession that is
26 licensed by an agency for which the office is required to conduct
27 administrative hearings./

3/4

1 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR
2 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
3 judge or the chief administrative law judge's designee shall
4 provide to office employees, as often as necessary, information
5 regarding the requirements for employment under this chapter,
6 including information regarding a person's responsibilities under
7 applicable laws relating to standards of conduct for state
8 employees.

9 SECTION 6. Section 2003.023, Government Code, is amended to
10 read as follows:

11 Sec. 2003.023. SUNSET PROVISION. The State Office of
12 Administrative Hearings is subject to review under Chapter 325
13 (Texas Sunset Act), but is not abolished under that chapter. The
14 office shall be reviewed during the periods in which state agencies
15 abolished in 2015 [2003] and every 12th year after 2015 [2003] are
16 reviewed.

17 SECTION 7. Section 2003.024, Government Code, is amended to
18 read as follows:

19 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
20 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
21 to the office during any of the three most recent state fiscal years
22 for which complete information about the agency's hourly usage is
23 available and the costs to the office of conducting hearings and
24 alternative dispute resolution procedures for the [a] state agency
25 [~~that refers matters to the office~~] are not to be [otherwise] paid
26 by appropriations to the office during a state fiscal biennium, the
27 office and the agency shall enter into an interagency contract for/ 4/5

1 the biennium under which the referring agency pays the office, at
2 the start of each fiscal year of the biennium, a lump-sum amount to
3 cover the costs of conducting all hearings and procedures during
4 the fiscal year [~~a hearing or procedure~~]. The lump-sum amount
5 [~~costs~~] paid to the office under the contract must be based on:

6 (1) an hourly rate that is set by the office [~~—The~~
7 ~~office shall set the hourly rate for a biennium~~] in time for the
8 rate to be reviewed by the legislature as part of the legislature's
9 review of the office's legislative appropriations request for the
10 biennium; and

11 (2) the anticipated hourly usage of the office's
12 services by the referring agency for each fiscal year of the
13 biennium, as estimated by the office under Subsection (a-1).

14 (a-1) Before the beginning of each state fiscal biennium,
15 the office shall estimate for each fiscal year of the biennium the
16 anticipated hourly usage for each state agency that referred
17 matters to the office during any of the three most recent state
18 fiscal years for which complete information about the agency's
19 hourly usage is available. The office shall estimate an agency's
20 anticipated hourly usage by evaluating:

21 (1) the number of hours spent by the office conducting
22 hearings or alternative dispute resolution procedures for the state
23 agency during the three most recent state fiscal years for which
24 complete information about the agency's hourly usage is available;
25 and

26 (2) any other relevant information, including
27 information provided to the office by the state agency, that / 3/6

1 suggests an anticipated increase or decrease in the agency's hourly
2 usage of the office's services during the state fiscal biennium, as
3 compared to past usage.

4 (a-2) If a state agency did not refer matters to the office
5 during any of the three state fiscal years preceding a state fiscal
6 biennium for which complete information about the agency's hourly
7 usage would have been available and did not provide information to
8 the office sufficient for the office to reasonably and timely
9 estimate anticipated usage and enter into a contract with the
10 agency before the start of the state fiscal biennium, and the costs
11 to the office of conducting hearings and alternative dispute
12 resolution procedures for the state agency are not paid by
13 appropriations to the office for the state fiscal biennium, the
14 referring agency shall pay the office the costs of conducting
15 hearings or procedures for the agency based on the hourly rate that
16 is set by the office under Subsection (a) and on the agency's actual
17 usage of the office's services.

18 (b) If the costs to the office of conducting hearings and
19 alternative dispute resolution procedures for a state agency that
20 refers matters to the office are anticipated to be ~~[otherwise]~~ paid
21 by a lump-sum appropriation ~~[appropriations]~~ to the office for
22 ~~[during]~~ a state fiscal biennium, the office shall timely provide
23 to the legislature the information described by Subsection (c)
24 ~~[office and the agency shall enter into an interagency contract for~~
25 ~~each state fiscal year during the biennium under which the~~
26 ~~referring agency pays the office the costs for the number of hours~~
27 ~~spent by the office conducting hearings or alternative dispute/~~

~~resolution procedures for the agency during the fiscal year that exceeds by 10 percent or more the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the state fiscal year that ended August 31, 1998. The costs paid under the contract must be based on an hourly rate that is set by the office. The office shall set the hourly rate for a biennium in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium].~~

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) [41] the salaries of its administrative law judges;

(B) [42] the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) [43] the administrative costs of the office, including docketing costs and the administrative costs of

1 the division of the office that conducts the hearing or procedure.

2 (d) This section does not apply to hearings conducted:

3 (1) by the natural resource conservation division or
4 the utility division; or

5 (2) under the administrative license revocation
6 program.

7 SECTION 8. Section 2003.050, Government Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) The rules of the office regarding the participation of a
10 witness by telephone must include procedures to verify the identity
11 of the witness who is to appear by telephone.

12 SECTION 9. Subchapter C, Chapter 2003, Government Code, is
13 amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055,
14 and 2003.056 to read as follows:

15 Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office
16 shall maintain a file on each written complaint filed with the
17 office. The file must include:

- 18 (1) the name of the person who filed the complaint;
19 (2) the date the complaint is received by the office;
20 (3) the subject matter of the complaint;
21 (4) the name of each person contacted in relation to
22 the complaint;
23 (5) a summary of the results of the review or
24 investigation of the complaint; and
25 (6) an explanation of the reason the file was closed,
26 if the office closed the file without taking action other than to
27 investigate the complaint./

1 (b) The office shall provide to the person filing the
2 complaint and to each person who is a subject of the complaint a
3 copy of the office's policies and procedures relating to complaint
4 investigation and resolution.

5 (c) The office, at least quarterly until final disposition
6 of the complaint, shall notify the person filing the complaint and
7 each person who is a subject of the complaint of the status of the
8 investigation unless the notice would jeopardize an undercover
9 investigation.

10 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

11 (a) The chief administrative law judge or the chief administrative
12 law judge's designee shall prepare and maintain a written policy
13 statement that implements a program of equal employment opportunity
14 to ensure that all personnel decisions are made without regard to
15 race, color, disability, sex, religion, age, or national origin.

16 (b) The policy statement must include:

17 (1) personnel policies, including policies relating
18 to recruitment, evaluation, selection, training, and promotion of
19 personnel, that show the intent of the office to avoid the unlawful
20 employment practices described by Chapter 21, Labor Code; and

21 (2) an analysis of the extent to which the composition
22 of the office's personnel is in accordance with state and federal
23 law and a description of reasonable methods to achieve compliance
24 with state and federal law.

25 (c) The policy statement must:

26 (1) be updated annually;

27 (2) be reviewed by the state Commission on Human 9/10

1 Rights for compliance with Subsection (b)(1); and

2 (3) be filed with the governor's office.

3 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
4 administrative law judge or the chief administrative law judge's
5 designee shall provide to office employees information and training
6 on the benefits and methods of participation in the ~~State Employee~~
7 ~~Incentive Program.~~

8 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
9 administrative law judge shall develop and implement a policy
10 requiring the chief administrative law judge and office employees
11 to research and propose appropriate technological solutions to
12 improve the office's ability to perform its functions. The
13 technological solutions must:

14 (1) ensure that the public is able to easily find
15 information about the office on the Internet;

16 (2) ensure that persons who want to use the office's
17 services are able to:

18 (A) interact with the office through the
19 Internet; and

20 (B) access any service that can be provided
21 effectively through the Internet; and

22 (3) be cost-effective and developed through the
23 office's planning processes.

24 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The
25 chief administrative law judge shall develop and implement a policy
26 to encourage the use of alternative dispute resolution procedures
27 where appropriate to assist in the internal and external resolution/

10/11

¹ of disputes within the office's jurisdiction.

¹¹
SECTION ~~N~~. Section 51.305, Occupations Code, is amended to
read as follows:

Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
respondent requests a hearing, the hearing shall be conducted by
the State Office of Administrative Hearings [~~department shall set a~~
~~hearing and give written notice of the hearing to the respondent~~].

(b) The State Office of Administrative Hearings shall
consider the department's applicable substantive rules and
policies when conducting a hearing under this subchapter [~~The~~
~~executive director may employ a hearings officer to conduct the~~
~~hearing~~].

(c) An administrative law judge at the State Office of
Administrative Hearings [~~The hearings officer~~] shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for
decision as to the occurrence of the violation and the amount of any
proposed administrative penalty.

¹²
SECTION ~~11~~. Subsection (a), Section 51.354, Occupations
Code, is amended to read as follows:

(a) A respondent is entitled to a hearing conducted by the
State Office of Administrative Hearings if the executive director
proposes to deny, suspend, or revoke a license. / "12

¹³
SECTION ~~12~~. Section 1802.203, Occupations Code, is amended
to read as follows:

Sec. 1802.203. HEARING. [~~(a)~~] If the amount determined by
the department under Section 1802.202 is disputed by the auctioneer

1 or the aggrieved party, the department shall refer the matter to the
2 State Office of Administrative Hearings for a hearing on the
3 disputed claim ~~[department's hearings examiner shall:~~

4 ~~[(1) conduct a hearing on the claim in accordance with~~
5 ~~department rules, and~~

6 ~~[(2) determine the amount owed to the aggrieved~~
7 ~~party].~~

8 ~~[(b) A hearing on a claim may be conducted at the~~
9 ~~department's Austin office or at another location as provided by~~
10 ~~department rule.~~

11 ~~[(c) After the hearing, the hearings examiner shall prepare~~
12 ~~a proposal for decision for the commissioner.]~~

13 SECTION ¹⁴13. The heading to Section 1802.253, Occupations
14 Code, is amended to read as follows:

15 Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE
16 HEARINGS.

17 SECTION ¹⁵14. Subsection (a), Section 1802.253, Occupations
18 Code, is amended to read as follows:

19 (a) Before denying an application for a license or
20 suspending or revoking a license, the commissioner shall:

21 (1) set the matter for a hearing to be conducted by the
22 State Office of Administrative Hearings; and/

23 (2) before the 30th day before the hearing date,
24 notify the applicant or license holder in writing of:

25 (A) the charges alleged or the question to be
26 determined at the hearing; and

27 (B) the date and location of the hearing.

1 SECTION ¹⁶~~15~~. Subsections (b) and (c), Section 51.354,
2 Occupations Code, are repealed.

3 SECTION ¹⁷~~16~~. On September 1, 2003:

4 (1) all functions and activities performed by the
5 Texas Department of Licensing and Regulation that relate to
6 conducting administrative hearings at the department are
7 transferred to the State Office of Administrative Hearings;

8 (2) two full-time equivalent employee positions are
9 transferred from the Texas Department of Licensing and Regulation
10 to the State Office of Administrative Hearings to provide the
11 hearing services described in Sections 51.305, 51.354, 1802.203,
12 and 1802.253, Occupations Code, as amended by this Act. When
13 filling the two full-time equivalent employee positions, the State
14 Office of Administrative Hearings shall give first consideration to
15 an applicant employed as a hearings examiner or administrative
16 technician at the Texas Department of Licensing and Regulation;

17 (3) all property, including records, in the custody of
18 the Texas Department of Licensing and Regulation related to
19 providing administrative hearings under the former Sections
20 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
21 the property of the State Office of Administrative Hearings, but
22 stays in the same physical location unless moved in accordance with / 13/14
23 the plan created under Section 17 of this Act; and

24 (4) all funds appropriated by the legislature to the
25 Texas Department of Licensing and Regulation for purposes relating
26 to conducting administrative hearings under the former Sections
27 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are

1 transferred to the State Office of Administrative Hearings.

2 ¹⁸
SECTION ~~17~~. The Texas Department of Licensing and
3 Regulation and the State Office of Administrative Hearings shall
4 establish a transition plan for the transfer described in Section
5 16 of this Act. The plan must include:

6 (1) a timetable for any necessary or advisable
7 movement of the physical location of property;

8 (2) an inventory of records and other property
9 required to be transferred; and

10 (3) a plan for continued support and cooperation the
11 Texas Department of Licensing and Regulation must provide the State
12 Office of Administrative Hearings to ensure an efficient transfer
13 of services and planning for future needs, including:

14 (A) an informational training session conducted
15 by the Texas Department of Licensing and Regulation for hearings
16 officers at the State Office of Administrative Hearings; and

17 (B) procedures for forwarding requests for
18 administrative hearings submitted to the Texas Department of
19 Licensing and Regulation to the State Office of Administrative
20 Hearings.

21 ¹⁹
SECTION ~~18~~. (a) This Act takes effect September 1, 2003.

22 (b) The change in law made by this Act to Section 2003.024, /¹⁴/₁₅
23 Government Code, applies only in relation to the state fiscal
24 biennium beginning September 1, 2005, and any subsequent state
25 fiscal biennium.

I certify this to be a true and correct
copy of the indicated document as
referred or transmitted to committee.

Chief Clerk of the House

By: Shapleigh
(Wise, Dunnam)

S.B. No. 1147

A BILL TO BE ENTITLED

AN ACT

relating to the functions of the State Office of Administrative
Hearings, including hearings functions transferred to the office
from the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 552, Government Code, is
amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE
LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The
following working papers of an administrative law judge at the
State Office of Administrative Hearings are excepted from the
requirements of Section 552.021:

(1) notes recording the observations, thoughts, or
impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with
conducting contested case hearings; and

(4) drafts of orders made in connection with
conducting alternative dispute resolution procedures.

SECTION 2. Section 2003.021, Government Code, is amended by
adding Subsection (g) to read as follows:

(g) The office shall conduct all hearings in contested cases
under Chapter 2001 that are before the Texas Department of
Licensing and Regulation under Chapter 51, Occupations Code.

SECTION 3. Section 2003.022, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended by adding Section 2003.0221 to read as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE.

It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

SECTION 5. Subchapter B, Chapter 2003, Government Code, is amended by adding Sections 2003.0225 and 2003.0226 to read as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or

1 professional competitors in this state designed to assist its
2 members and its industry or profession in dealing with mutual
3 business or professional problems and in promoting their common
4 interest.

5 (b) A person may not hold the position of chief
6 administrative law judge and may not be employed by the office in a
7 "bona fide executive, administrative, or professional capacity,"
8 as that phrase is used for purposes of establishing an exemption to
9 the overtime provisions of the federal Fair Labor Standards Act of
10 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
11 amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in any field regulated by an
14 agency for which the office is required to conduct administrative
15 hearings; or

16 (2) the person's spouse is an officer, manager, or paid
17 consultant of a Texas trade association in any field regulated by an
18 agency for which the office is required to conduct administrative
19 hearings.

20 (c) A person may not hold the position of chief
21 administrative law judge or act as the general counsel to the chief
22 administrative law judge or the office if the person is required to
23 register as a lobbyist under Chapter 305 because of the person's
24 activities for compensation on behalf of a profession related to
25 the operation of the office, including a profession that is
26 licensed by an agency for which the office is required to conduct
27 administrative hearings.

1 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR
2 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
3 judge or the chief administrative law judge's designee shall
4 provide to office employees, as often as necessary, information
5 regarding the requirements for employment under this chapter,
6 including information regarding a person's responsibilities under
7 applicable laws relating to standards of conduct for state
8 employees.

9 SECTION 6. Section 2003.023, Government Code, is amended to
10 read as follows:

11 Sec. 2003.023. SUNSET PROVISION. The State Office of
12 Administrative Hearings is subject to review under Chapter 325
13 (Texas Sunset Act), but is not abolished under that chapter. The
14 office shall be reviewed during the periods in which state agencies
15 abolished in 2015 [2003] and every 12th year after 2015 [2003] are
16 reviewed.

17 SECTION 7. Section 2003.024, Government Code, is amended to
18 read as follows:

19 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
20 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
21 to the office during any of the three most recent state fiscal years
22 for which complete information about the agency's hourly usage is
23 available and the costs to the office of conducting hearings and
24 alternative dispute resolution procedures for the [a] state agency
25 [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid
26 by appropriations to the office during a state fiscal biennium, the
27 office and the agency shall enter into an interagency contract for

1 the biennium under which the referring agency pays the office, at
2 the start of each fiscal year of the biennium, a lump-sum amount to
3 cover the costs of conducting all hearings and procedures during
4 the fiscal year [~~a hearing or procedure~~]. The lump-sum amount
5 [~~costs~~] paid to the office under the contract must be based on:

6 (1) an hourly rate that is set by the office[~~—The~~
7 ~~office shall set the hourly rate for a biennium~~] in time for the
8 rate to be reviewed by the legislature as part of the legislature's
9 review of the office's legislative appropriations request for the
10 biennium; and

11 (2) the anticipated hourly usage of the office's
12 services by the referring agency for each fiscal year of the
13 biennium, as estimated by the office under Subsection (a-1).

14 (a-1) Before the beginning of each state fiscal biennium,
15 the office shall estimate for each fiscal year of the biennium the
16 anticipated hourly usage for each state agency that referred
17 matters to the office during any of the three most recent state
18 fiscal years for which complete information about the agency's
19 hourly usage is available. The office shall estimate an agency's
20 anticipated hourly usage by evaluating:

21 (1) the number of hours spent by the office conducting
22 hearings or alternative dispute resolution procedures for the state
23 agency during the three most recent state fiscal years for which
24 complete information about the agency's hourly usage is available;
25 and

26 (2) any other relevant information, including
27 information provided to the office by the state agency, that

1 suggests an anticipated increase or decrease in the agency's hourly
2 usage of the office's services during the state fiscal biennium, as
3 compared to past usage.

4 (a-2) If a state agency did not refer matters to the office
5 during any of the three state fiscal years preceding a state fiscal
6 biennium for which complete information about the agency's hourly
7 usage would have been available and did not provide information to
8 the office sufficient for the office to reasonably and timely
9 estimate anticipated usage and enter into a contract with the
10 agency before the start of the state fiscal biennium, and the costs
11 to the office of conducting hearings and alternative dispute
12 resolution procedures for the state agency are not paid by
13 appropriations to the office for the state fiscal biennium, the
14 referring agency shall pay the office the costs of conducting
15 hearings or procedures for the agency based on the hourly rate that
16 is set by the office under Subsection (a) and on the agency's actual
17 usage of the office's services.

18 (b) If the costs to the office of conducting hearings and
19 alternative dispute resolution procedures for a state agency that
20 refers matters to the office are anticipated to be [otherwise] paid
21 by a lump-sum appropriation [appropriations] to the office for
22 [during] a state fiscal biennium, the office shall timely provide
23 to the legislature the information described by Subsection (c)
24 [office and the agency shall enter into an interagency contract for
25 each state fiscal year during the biennium under which the
26 referring agency pays the office the costs for the number of hours
27 spent by the office conducting hearings or alternative dispute

~~resolution procedures for the agency during the fiscal year that exceeds by 10 percent or more the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the state fiscal year that ended August 31, 1998. The costs paid under the contract must be based on an hourly rate that is set by the office. The office shall set the hourly rate for a biennium in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium].~~

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) [(1)] the salaries of its administrative law judges;

(B) [(2)] the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) [(3)] the administrative costs of the office, including docketing costs and the administrative costs of

1 the division of the office that conducts the hearing or procedure.

2 (d) This section does not apply to hearings conducted:

3 (1) by the natural resource conservation division or
4 the utility division; or

5 (2) under the administrative license revocation
6 program.

7 SECTION 8. Section 2003.050, Government Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) The rules of the office regarding the participation of a
10 witness by telephone must include procedures to verify the identity
11 of the witness who is to appear by telephone.

12 SECTION 9. Subchapter C, Chapter 2003, Government Code, is
13 amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055,
14 and 2003.056 to read as follows:

15 Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office
16 shall maintain a file on each written complaint filed with the
17 office. The file must include:

- 18 (1) the name of the person who filed the complaint;
19 (2) the date the complaint is received by the office;
20 (3) the subject matter of the complaint;
21 (4) the name of each person contacted in relation to
22 the complaint;
23 (5) a summary of the results of the review or
24 investigation of the complaint; and
25 (6) an explanation of the reason the file was closed,
26 if the office closed the file without taking action other than to
27 investigate the complaint.

1 (b) The office shall provide to the person filing the
2 complaint and to each person who is a subject of the complaint a
3 copy of the office's policies and procedures relating to complaint
4 investigation and resolution.

5 (c) The office, at least quarterly until final disposition
6 of the complaint, shall notify the person filing the complaint and
7 each person who is a subject of the complaint of the status of the
8 investigation unless the notice would jeopardize an undercover
9 investigation.

10 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

11 (a) The chief administrative law judge or the chief administrative
12 law judge's designee shall prepare and maintain a written policy
13 statement that implements a program of equal employment opportunity
14 to ensure that all personnel decisions are made without regard to
15 race, color, disability, sex, religion, age, or national origin.

16 (b) The policy statement must include:

17 (1) personnel policies, including policies relating
18 to recruitment, evaluation, selection, training, and promotion of
19 personnel, that show the intent of the office to avoid the unlawful
20 employment practices described by Chapter 21, Labor Code; and

21 (2) an analysis of the extent to which the composition
22 of the office's personnel is in accordance with state and federal
23 law and a description of reasonable methods to achieve compliance
24 with state and federal law.

25 (c) The policy statement must:

26 (1) be updated annually;

27 (2) be reviewed by the state Commission on Human

1 Rights for compliance with Subsection (b)(1); and

2 (3) be filed with the governor's office.

3 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
4 administrative law judge or the chief administrative law judge's
5 designee shall provide to office employees information and training
6 on the benefits and methods of participation in the state employee
7 incentive program.

8 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
9 administrative law judge shall develop and implement a policy
10 requiring the chief administrative law judge and office employees
11 to research and propose appropriate technological solutions to
12 improve the office's ability to perform its functions. The
13 technological solutions must:

14 (1) ensure that the public is able to easily find
15 information about the office on the Internet;

16 (2) ensure that persons who want to use the office's
17 services are able to:

18 (A) interact with the office through the
19 Internet; and

20 (B) access any service that can be provided
21 effectively through the Internet; and

22 (3) be cost-effective and developed through the
23 office's planning processes.

24 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The
25 chief administrative law judge shall develop and implement a policy
26 to encourage the use of alternative dispute resolution procedures
27 where appropriate to assist in the internal and external resolution

1 of disputes within the office's jurisdiction.

2 SECTION 10. Section 51.305, Occupations Code, is amended to
3 read as follows:

4 Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
5 respondent requests a hearing, the hearing shall be conducted by
6 the State Office of Administrative Hearings [~~department shall set a~~
7 ~~hearing and give written notice of the hearing to the respondent~~].

8 (b) The State Office of Administrative Hearings shall
9 consider the department's applicable substantive rules and
10 policies when conducting a hearing under this subchapter [~~The~~
11 ~~executive director may employ a hearings officer to conduct the~~
12 ~~hearing~~].

13 (c) An administrative law judge at the State Office of
14 Administrative Hearings [~~The hearings officer~~] shall:

15 (1) make findings of fact and conclusions of law; and

16 (2) promptly issue to the commission a proposal for
17 decision as to the occurrence of the violation and the amount of any
18 proposed administrative penalty.

19 SECTION 11. Subsection (a), Section 51.354, Occupations
20 Code, is amended to read as follows:

21 (a) A respondent is entitled to a hearing conducted by the
22 State Office of Administrative Hearings if the executive director
23 proposes to deny, suspend, or revoke a license.

24 SECTION 12. Section 1802.203, Occupations Code, is amended
25 to read as follows:

26 Sec. 1802.203. HEARING. [~~(a)~~] If the amount determined by
27 the department under Section 1802.202 is disputed by the auctioneer

1 or the aggrieved party, the department shall refer the matter to the
2 State Office of Administrative Hearings for a hearing on the
3 disputed claim ~~[department's hearings examiner shall:~~

4 ~~[(1) conduct a hearing on the claim in accordance with~~
5 ~~department rules; and~~

6 ~~[(2) determine the amount owed to the aggrieved~~
7 ~~party].~~

8 ~~[(b) A hearing on a claim may be conducted at the~~
9 ~~department's Austin office or at another location as provided by~~
10 ~~department rule.~~

11 ~~[(c) After the hearing, the hearings examiner shall prepare~~
12 ~~a proposal for decision for the commissioner.]~~

13 SECTION 13. The heading to Section 1802.253, Occupations
14 Code, is amended to read as follows:

15 Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE
16 HEARINGS.

17 SECTION 14. Subsection (a), Section 1802.253, Occupations
18 Code, is amended to read as follows:

19 (a) Before denying an application for a license or
20 suspending or revoking a license, the commissioner shall:

21 (1) set the matter for a hearing to be conducted by the
22 State Office of Administrative Hearings; and

23 (2) before the 30th day before the hearing date,
24 notify the applicant or license holder in writing of:

25 (A) the charges alleged or the question to be
26 determined at the hearing; and

27 (B) the date and location of the hearing.

1 SECTION 15. Subsections (b) and (c), Section 51.354,
2 Occupations Code, are repealed.

3 SECTION 16. On September 1, 2003:

4 (1) all functions and activities performed by the
5 Texas Department of Licensing and Regulation that relate to
6 conducting administrative hearings at the department are
7 transferred to the State Office of Administrative Hearings;

8 (2) two full-time equivalent employee positions are
9 transferred from the Texas Department of Licensing and Regulation
10 to the State Office of Administrative Hearings to provide the
11 hearing services described in Sections 51.305, 51.354, 1802.203,
12 and 1802.253, Occupations Code, as amended by this Act. When
13 filling the two full-time equivalent employee positions, the State
14 Office of Administrative Hearings shall give first consideration to
15 an applicant employed as a hearings examiner or administrative
16 technician at the Texas Department of Licensing and Regulation;

17 (3) all property, including records, in the custody of
18 the Texas Department of Licensing and Regulation related to
19 providing administrative hearings under the former Sections
20 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
21 the property of the State Office of Administrative Hearings, but
22 stays in the same physical location unless moved in accordance with
23 the plan created under Section 17 of this Act; and

24 (4) all funds appropriated by the legislature to the
25 Texas Department of Licensing and Regulation for purposes relating
26 to conducting administrative hearings under the former Sections
27 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are

1 transferred to the State Office of Administrative Hearings.

2 SECTION 17. The Texas Department of Licensing and
3 Regulation and the State Office of Administrative Hearings shall
4 establish a transition plan for the transfer described in Section
5 16 of this Act. The plan must include:

6 (1) a timetable for any necessary or advisable
7 movement of the physical location of property;

8 (2) an inventory of records and other property
9 required to be transferred; and

10 (3) a plan for continued support and cooperation the
11 Texas Department of Licensing and Regulation must provide the State
12 Office of Administrative Hearings to ensure an efficient transfer
13 of services and planning for future needs, including:

14 (A) an informational training session conducted
15 by the Texas Department of Licensing and Regulation for hearings
16 officers at the State Office of Administrative Hearings; and

17 (B) procedures for forwarding requests for
18 administrative hearings submitted to the Texas Department of
19 Licensing and Regulation to the State Office of Administrative
20 Hearings.

21 SECTION 18. (a) This Act takes effect September 1, 2003.

22 (b) The change in law made by this Act to Section 2003.024,
23 Government Code, applies only in relation to the state fiscal
24 biennium beginning September 1, 2005, and any subsequent state
25 fiscal biennium.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB1147** by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings function transferred to the office from the Texas Department of Licensing and Regulation.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

6

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 26, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

HOUSE COMMITTEE REPORT

03 MAY -9 AM 1: 23
HOUSE OF REPRESENTATIVES

1st Printing

By: Shapleigh
(Wise, Dunnam)

S.B. No. 1147

A BILL TO BE ENTITLED

AN ACT

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes recording the observations, thoughts, or impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with conducting contested case hearings; and

(4) drafts of orders made in connection with conducting alternative dispute resolution procedures.

SECTION 2. Section 2003.021, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.

SECTION 3. Section 2003.022, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended by adding Section 2003.0221 to read as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

SECTION 5. Subchapter B, Chapter 2003, Government Code, is amended by adding Sections 2003.0225 and 2003.0226 to read as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or

1 professional competitors in this state designed to assist its
2 members and its industry or profession in dealing with mutual
3 business or professional problems and in promoting their common
4 interest.

5 (b) A person may not hold the position of chief
6 administrative law judge and may not be employed by the office in a
7 "bona fide executive, administrative, or professional capacity,"
8 as that phrase is used for purposes of establishing an exemption to
9 the overtime provisions of the federal Fair Labor Standards Act of
10 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
11 amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in any field regulated by an
14 agency for which the office is required to conduct administrative
15 hearings; or

16 (2) the person's spouse is an officer, manager, or paid
17 consultant of a Texas trade association in any field regulated by an
18 agency for which the office is required to conduct administrative
19 hearings.

20 (c) A person may not hold the position of chief
21 administrative law judge or act as the general counsel to the chief
22 administrative law judge or the office if the person is required to
23 register as a lobbyist under Chapter 305 because of the person's
24 activities for compensation on behalf of a profession related to
25 the operation of the office, including a profession that is
26 licensed by an agency for which the office is required to conduct
27 administrative hearings.

1 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR
2 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
3 judge or the chief administrative law judge's designee shall
4 provide to office employees, as often as necessary, information
5 regarding the requirements for employment under this chapter,
6 including information regarding a person's responsibilities under
7 applicable laws relating to standards of conduct for state
8 employees.

9 SECTION 6. Section 2003.023, Government Code, is amended to
10 read as follows:

11 Sec. 2003.023. SUNSET PROVISION. The State Office of
12 Administrative Hearings is subject to review under Chapter 325
13 (Texas Sunset Act), but is not abolished under that chapter. The
14 office shall be reviewed during the periods in which state agencies
15 abolished in 2015 [~~2003~~] and every 12th year after 2015 [~~2003~~] are
16 reviewed.

17 SECTION 7. Section 2003.024, Government Code, is amended to
18 read as follows:

19 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
20 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
21 to the office during any of the three most recent state fiscal years
22 for which complete information about the agency's hourly usage is
23 available and the costs to the office of conducting hearings and
24 alternative dispute resolution procedures for the [~~a~~] state agency
25 [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid
26 by appropriations to the office during a state fiscal biennium, the
27 office and the agency shall enter into an interagency contract for

the biennium under which the referring agency pays the office, at the start of each fiscal year of the biennium, a lump-sum amount to cover the costs of conducting all hearings and procedures during the fiscal year ~~[a hearing or procedure]~~. The lump-sum amount ~~[costs]~~ paid to the office under the contract must be based on:

(1) an hourly rate that is set by the office~~[-The office shall set the hourly rate for a biennium]~~ in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium; and

(2) the anticipated hourly usage of the office's services by the referring agency for each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

(a-1) Before the beginning of each state fiscal biennium, the office shall estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. The office shall estimate an agency's anticipated hourly usage by evaluating:

(1) the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the state agency during the three most recent state fiscal years for which complete information about the agency's hourly usage is available; and

(2) any other relevant information, including information provided to the office by the state agency, that

1 suggests an anticipated increase or decrease in the agency's hourly
2 usage of the office's services during the state fiscal biennium, as
3 compared to past usage.

4 (a-2) If a state agency did not refer matters to the office
5 during any of the three state fiscal years preceding a state fiscal
6 biennium for which complete information about the agency's hourly
7 usage would have been available and did not provide information to
8 the office sufficient for the office to reasonably and timely
9 estimate anticipated usage and enter into a contract with the
10 agency before the start of the state fiscal biennium, and the costs
11 to the office of conducting hearings and alternative dispute
12 resolution procedures for the state agency are not paid by
13 appropriations to the office for the state fiscal biennium, the
14 referring agency shall pay the office the costs of conducting
15 hearings or procedures for the agency based on the hourly rate that
16 is set by the office under Subsection (a) and on the agency's actual
17 usage of the office's services.

18 (b) If the costs to the office of conducting hearings and
19 alternative dispute resolution procedures for a state agency that
20 refers matters to the office are anticipated to be ~~[otherwise]~~ paid
21 by a lump-sum appropriation ~~[appropriations]~~ to the office for
22 ~~[during]~~ a state fiscal biennium, the office shall timely provide
23 to the legislature the information described by Subsection (c)
24 ~~[office and the agency shall enter into an interagency contract for~~
25 ~~each state fiscal year during the biennium under which the~~
26 ~~referring agency pays the office the costs for the number of hours~~
27 ~~spent by the office conducting hearings or alternative dispute~~

~~resolution procedures for the agency during the fiscal year that exceeds by 10 percent or more the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the state fiscal year that ended August 31, 1998. The costs paid under the contract must be based on an hourly rate that is set by the office. The office shall set the hourly rate for a biennium in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium].~~

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) [(1)] the salaries of its administrative law judges;

(B) [(2)] the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) [(3)] the administrative costs of the office, including docketing costs and the administrative costs of

1 the division of the office that conducts the hearing or procedure.

2 (d) This section does not apply to hearings conducted:

3 (1) by the natural resource conservation division or
4 the utility division; or

5 (2) under the administrative license revocation
6 program.

7 SECTION 8. Section 2003.050, Government Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) The rules of the office regarding the participation of a
10 witness by telephone must include procedures to verify the identity
11 of the witness who is to appear by telephone.

12 SECTION 9. Subchapter C, Chapter 2003, Government Code, is
13 amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055,
14 and 2003.056 to read as follows:

15 Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office
16 shall maintain a file on each written complaint filed with the
17 office. The file must include:

- 18 (1) the name of the person who filed the complaint;
19 (2) the date the complaint is received by the office;
20 (3) the subject matter of the complaint;
21 (4) the name of each person contacted in relation to
22 the complaint;
23 (5) a summary of the results of the review or
24 investigation of the complaint; and
25 (6) an explanation of the reason the file was closed,
26 if the office closed the file without taking action other than to
27 investigate the complaint.

1 (b) The office shall provide to the person filing the
2 complaint and to each person who is a subject of the complaint a
3 copy of the office's policies and procedures relating to complaint
4 investigation and resolution.

5 (c) The office, at least quarterly until final disposition
6 of the complaint, shall notify the person filing the complaint and
7 each person who is a subject of the complaint of the status of the
8 investigation unless the notice would jeopardize an undercover
9 investigation.

10 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

11 (a) The chief administrative law judge or the chief administrative
12 law judge's designee shall prepare and maintain a written policy
13 statement that implements a program of equal employment opportunity
14 to ensure that all personnel decisions are made without regard to
15 race, color, disability, sex, religion, age, or national origin.

16 (b) The policy statement must include:

17 (1) personnel policies, including policies relating
18 to recruitment, evaluation, selection, training, and promotion of
19 personnel, that show the intent of the office to avoid the unlawful
20 employment practices described by Chapter 21, Labor Code; and

21 (2) an analysis of the extent to which the composition
22 of the office's personnel is in accordance with state and federal
23 law and a description of reasonable methods to achieve compliance
24 with state and federal law.

25 (c) The policy statement must:

26 (1) be updated annually;

27 (2) be reviewed by the state Commission on Human

1 Rights for compliance with Subsection (b)(1); and

2 (3) be filed with the governor's office.

3 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
4 administrative law judge or the chief administrative law judge's
5 designee shall provide to office employees information and training
6 on the benefits and methods of participation in the state employee
7 incentive program.

8 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
9 administrative law judge shall develop and implement a policy
10 requiring the chief administrative law judge and office employees
11 to research and propose appropriate technological solutions to
12 improve the office's ability to perform its functions. The
13 technological solutions must:

14 (1) ensure that the public is able to easily find
15 information about the office on the Internet;

16 (2) ensure that persons who want to use the office's
17 services are able to:

18 (A) interact with the office through the
19 Internet; and

20 (B) access any service that can be provided
21 effectively through the Internet; and

22 (3) be cost-effective and developed through the
23 office's planning processes.

24 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The
25 chief administrative law judge shall develop and implement a policy
26 to encourage the use of alternative dispute resolution procedures
27 where appropriate to assist in the internal and external resolution

1 of disputes within the office's jurisdiction.

2 SECTION 10. Section 51.305, Occupations Code, is amended to
3 read as follows:

4 Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
5 respondent requests a hearing, the hearing shall be conducted by
6 the State Office of Administrative Hearings [~~department shall set a~~
7 ~~hearing and give written notice of the hearing to the respondent~~].

8 (b) The State Office of Administrative Hearings shall
9 consider the department's applicable substantive rules and
10 policies when conducting a hearing under this subchapter [~~The~~
11 ~~executive director may employ a hearings officer to conduct the~~
12 ~~hearing~~].

13 (c) An administrative law judge at the State Office of
14 Administrative Hearings [~~The hearings officer~~] shall:

15 (1) make findings of fact and conclusions of law; and

16 (2) promptly issue to the commission a proposal for
17 decision as to the occurrence of the violation and the amount of any
18 proposed administrative penalty.

19 SECTION 11. Subsection (a), Section 51.354, Occupations
20 Code, is amended to read as follows:

21 (a) A respondent is entitled to a hearing conducted by the
22 State Office of Administrative Hearings if the executive director
23 proposes to deny, suspend, or revoke a license.

24 SECTION 12. Section 1802.203, Occupations Code, is amended
25 to read as follows:

26 Sec. 1802.203. HEARING. [~~(a)~~] If the amount determined by
27 the department under Section 1802.202 is disputed by the auctioneer

1 or the aggrieved party, the department shall refer the matter to the
2 State Office of Administrative Hearings for a hearing on the
3 disputed claim [~~department's hearings examiner shall~~

4 [~~(1) conduct a hearing on the claim in accordance with~~
5 ~~department rules, and~~

6 [~~(2) determine the amount owed to the aggrieved~~
7 ~~party]~~.

8 [~~(b) A hearing on a claim may be conducted at the~~
9 ~~department's Austin office or at another location as provided by~~
10 ~~department rule.~~

11 [~~(c) After the hearing, the hearings examiner shall prepare~~
12 ~~a proposal for decision for the commissioner.]~~

13 SECTION 13. The heading to Section 1802.253, Occupations
14 Code, is amended to read as follows:

15 Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE
16 HEARINGS.

17 SECTION 14. Subsection (a), Section 1802.253, Occupations
18 Code, is amended to read as follows:

19 (a) Before denying an application for a license or
20 suspending or revoking a license, the commissioner shall:

21 (1) set the matter for a hearing to be conducted by the
22 State Office of Administrative Hearings; and

23 (2) before the 30th day before the hearing date,
24 notify the applicant or license holder in writing of:

25 (A) the charges alleged or the question to be
26 determined at the hearing; and

27 (B) the date and location of the hearing.

1 SECTION 15. Subsections (b) and (c), Section 51.354,
2 Occupations Code, are repealed.

3 SECTION 16. On September 1, 2003:

4 (1) all functions and activities performed by the
5 Texas Department of Licensing and Regulation that relate to
6 conducting administrative hearings at the department are
7 transferred to the State Office of Administrative Hearings;

8 (2) two full-time equivalent employee positions are
9 transferred from the Texas Department of Licensing and Regulation
10 to the State Office of Administrative Hearings to provide the
11 hearing services described in Sections 51.305, 51.354, 1802.203,
12 and 1802.253, Occupations Code, as amended by this Act. When
13 filling the two full-time equivalent employee positions, the State
14 Office of Administrative Hearings shall give first consideration to
15 an applicant employed as a hearings examiner or administrative
16 technician at the Texas Department of Licensing and Regulation;

17 (3) all property, including records, in the custody of
18 the Texas Department of Licensing and Regulation related to
19 providing administrative hearings under the former Sections
20 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
21 the property of the State Office of Administrative Hearings, but
22 stays in the same physical location unless moved in accordance with
23 the plan created under Section 17 of this Act; and

24 (4) all funds appropriated by the legislature to the
25 Texas Department of Licensing and Regulation for purposes relating
26 to conducting administrative hearings under the former Sections
27 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are

1 transferred to the State Office of Administrative Hearings.

2 SECTION 17. The Texas Department of Licensing and
3 Regulation and the State Office of Administrative Hearings shall
4 establish a transition plan for the transfer described in Section
5 16 of this Act. The plan must include:

6 (1) a timetable for any necessary or advisable
7 movement of the physical location of property;

8 (2) an inventory of records and other property
9 required to be transferred; and

10 (3) a plan for continued support and cooperation the
11 Texas Department of Licensing and Regulation must provide the State
12 Office of Administrative Hearings to ensure an efficient transfer
13 of services and planning for future needs, including:

14 (A) an informational training session conducted
15 by the Texas Department of Licensing and Regulation for hearings
16 officers at the State Office of Administrative Hearings; and

17 (B) procedures for forwarding requests for
18 administrative hearings submitted to the Texas Department of
19 Licensing and Regulation to the State Office of Administrative
20 Hearings.

21 SECTION 18. (a) This Act takes effect September 1, 2003.

22 (b) The change in law made by this Act to Section 2003.024,
23 Government Code, applies only in relation to the state fiscal
24 biennium beginning September 1, 2005, and any subsequent state
25 fiscal biennium.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

May 6, 2003
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES
to whom was referred SB1147 have had the same under consideration and beg to report
back with the recommendation that it

☒ do pass, without amendment.
☐ do pass, with amendment(s).
☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

☐ yes ☒ no A fiscal note was requested.
☐ yes ☒ no A criminal justice policy impact statement was requested.
☐ yes ☒ no An equalized educational funding impact statement was requested.
☐ yes ☒ no An actuarial analysis was requested.
☐ yes ☒ no A water development policy impact statement was requested.
☐ yes ☒ no A tax equity note was requested.

☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Wise

Joint Sponsors: Dunnam / /

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Flores, Chair	X			
Hamilton, Vice-chair	X			
Driver				X
Eissler	X			
Goolsby	X			
Homer				X
Jones, D.	X			
Raymond				X
Wise	X			

Total

6 aye
0 nay
0 present, not voting
3 absent

[Signature]
CHAIR

BILL ANALYSIS

S.B. 1147
By: Shapleigh
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The State Office of Administrative Hearings (SOAH) was created in 1991 to conduct administrative law hearings and alternative dispute resolution proceedings involving Texas state agencies, and other governmental entities, private citizens, and corporations doing business within the state. More than seventy state agencies and local political subdivisions refer cases to SOAH. SOAH is subject to review, but not abolishment, under the Sunset Act. S.B. 1147 continues SOAH for the standard 12-year period until 2015 and transfers the administrative hearings function of the Texas Department of Licensing and Regulation to SOAH.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 552C, Government Code, by adding Section 552.141, as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that certain working papers of an administrative law judge at the State Office of Administrative Hearings (SOAH) are excepted from the requirements of Section 552.021.

SECTION 2. Amends Section 2003.021, Government Code, by adding Subsection (g), to require SOAH to conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation (TDLR) under Chapter 51, Occupations Code.

SECTION 3. Amends Section 2003.022, Government Code, by adding Subsection (e) to update standard Sunset language requiring the appointment of the chief administrative law judge to be made without regard to certain personal characteristics.

SECTION 4. Amends Chapter 2003B, Government Code, by adding Section 2003.0221, as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. Updates standard Sunset language relating to the grounds for removal of the chief administrative law judge.

SECTION 5. Amends Chapter 2003B, Government Code, by adding Sections 2003.0225 and 2003.0226, as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. Updates standard Sunset language relating to conflicts of interest.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. Updates standard Sunset language requiring information on standards of conduct to be provide to SOAH

employees.

SECTION 6. Amends Section 2003.023, Government Code, to continue SOAH for the standard 12-year period until 2015 and require its review every 12th year after 2015.

SECTION 7. Amends Section 2003.024, Government Code, as follows:

Sec. 2003.024. New heading: INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) Eliminates the process for billing agencies for hearing costs and provides instead for up-front payments to SOAH based on agencies' previous usage.

(a-1) Requires SOAH, before the beginning of each state fiscal biennium, to estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. Requires SOAH to estimate an agency's anticipated hourly usage by evaluating certain criteria.

(a-2) Requires the referring agency, if a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, to pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

(b) Makes conforming changes. Deletes current language in text.

(c) Requires SOAH, as part of its legislative appropriation request, each state fiscal biennium, to file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to SOAH. Makes conforming changes.

SECTION 8. Amends Section 2003.050, Government Code, by adding Subsection (c), to require the rules of the office regarding the participation of a witness by telephone to include procedures to verify the identity of the witness who is to appear by telephone.

SECTION 9. Amends Chapter 2003C, Government Code, by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056, as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) Updates standard Sunset language requiring SOAH to maintain a file on complaints.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Updates standard Sunset language requiring the chief administrative law judge or designee to develop an equal opportunity policy.

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. Updates standard Sunset language requiring the chief administrative law judge or designee to provide SOAH employees with information and training on the benefits and methods of participation in the State Employee Incentive Program.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a technology policy.

Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within SOAH's jurisdiction.

SECTION 10. Amends Section 51.305, Occupations Code, as follows:

- (a) Requires the hearing, if the respondent requests a hearing, to be conducted by SOAH.
- (b) Requires SOAH to consider TDLR's applicable substantive rules and policies when conducting a hearing under this subchapter.
- (c) Replaces "hearing officer" with "an administrative law judge at the State Office of Administrative Hearings" in existing text.

SECTION 11. Amends Section 51.354(a), Occupations Code, to make a conforming change.

SECTION 12. Amends Section 1802.203, Occupations Code, to require TDLR, if the amount is disputed by the auctioneer or the aggrieved party, to refer the matter to SOAH for a hearing on the disputed claim.

SECTION 13. Amends the heading to Section 1802.253, Occupations Code, to read as follows:

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

SECTION 14. Amends Section 1802.253 (a), Occupations Code, to add a new requirement before denying an application for a license or suspending or revoking a license.

SECTION 15. Repealer: Sections 51.354 (b) and (c), Occupations Code (Right to Hearing; Administrative Procedure)

SECTION 16. Provides that on September 1, 2003:

- (1) all functions and activities performed by TDLR that relate to conducting administrative hearings at TDLR are transferred to SOAH;
- (2) two full-time equivalent employee positions are transferred from TDLR SOAH to provide the hearing services described in Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, as amended by this Act. Requires SOAH, when filling the two full-time equivalent employee positions, to give first consideration to an applicant employed as a hearings examiner or administrative technician at TDLR;
- (3) all property, including records, in the custody of TDLR related to providing administrative hearings under the former Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, becomes the property of SOAH, but stays in the same physical location unless moved in accordance with the plan created under Section 15 of this Act; and
- (4) all funds appropriated by the legislature to TDLR for purposes relating to conducting administrative hearings under the former Sections 51.305, 51.354, and 1802.203, and 1802.253, Occupations Code, are transferred to SOAH.

SECTION 17. Requires TDLR and SOAH to establish a transition plan for the transfer described in Section 14 of this Act. Requires the plan to include certain criteria.

SECTION 18. (a) Effective date: September 1, 2003.

(b) Makes application of Section 2003.024, Government Code, as amended by this Act prospective to September 1, 2005.

EFFECTIVE DATE

September 1, 2003.

SUMMARY OF COMMITTEE ACTION

SB 1147

May 6, 2003 8:00AM

Considered in public hearing

Testimony taken in committee (Legislator(s) only.)

Reported favorably without amendment(s)

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB1147** by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings function transferred to the office from the Texas Department of Licensing and Regulation.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 26, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

SB1147-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Escobar	Amendment	Adopted



FLOOR AMENDMENT NO. 1

BY: Eserbor

1 Amend S.B. No. 1147 (Committee Printing) by adding the
2 following appropriately numbered SECTION to the bill and
3 renumbering subsequent SECTIONS appropriately:

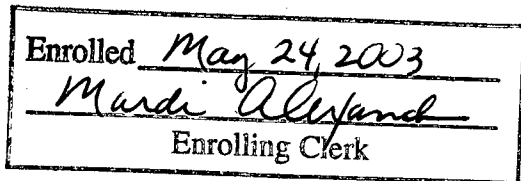
4 SECTION 10. Subchapter C, Chapter 2003, Government Code, is
5 amended by adding Section 2003.057 to read as follows:

6 Sec. 2003.057. HEARING TRANSLATOR. If a translator is
7 requested for all or part of a hearing conducted by the office, the
8 office shall provide an appropriate translator for that purpose.

ADOPTED

MAY 19 2003

Robert H. Hanes
Chief Clerk
House of Representatives



S.B. No. 1147

1 AN ACT

2 relating to the functions of the State Office of Administrative
3 Hearings, including hearings functions transferred to the office
4 from the Texas Department of Licensing and Regulation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 552, Government Code, is
7 amended by adding Section 552.141 to read as follows:

8 Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE
9 LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The
10 following working papers of an administrative law judge at the
11 State Office of Administrative Hearings are excepted from the
12 requirements of Section 552.021:

13 (1) notes recording the observations, thoughts, or
14 impressions of an administrative law judge;

15 (2) drafts of a proposal for decision;

16 (3) drafts of orders made in connection with
17 conducting contested case hearings; and

18 (4) drafts of orders made in connection with
19 conducting alternative dispute resolution procedures.

20 SECTION 2. Section 2003.021, Government Code, is amended by
21 adding Subsection (g) to read as follows:

22 (g) The office shall conduct all hearings in contested cases
23 under Chapter 2001 that are before the Texas Department of
24 Licensing and Regulation under Chapter 51, Occupations Code.

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1 SECTION 3. Section 2003.022, Government Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) The appointment of the chief administrative law judge
4 shall be made without regard to the race, color, disability, sex,
5 religion, age, or national origin of the appointee.

6 SECTION 4. Subchapter B, Chapter 2003, Government Code, is
7 amended by adding Section 2003.0221 to read as follows:

8 Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE.
9 It is a ground for removal from the position of chief administrative
10 law judge that an appointee:

11 (1) does not have at the time of taking office the
12 qualifications required by Section 2003.022(b);

13 (2) does not maintain during service as chief
14 administrative law judge a license to practice law in this state;

15 (3) is ineligible to hold the position under Section
16 2003.0225;

17 (4) cannot, because of illness or disability,
18 discharge the appointee's duties for a substantial part of the
19 appointee's term; or

20 (5) engages in the practice of law in violation of
21 Section 2003.022(c).

22 SECTION 5. Subchapter B, Chapter 2003, Government Code, is
23 amended by adding Sections 2003.0225 and 2003.0226 to read as
24 follows:

25 Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this
26 section, "Texas trade association" means a cooperative and
27 voluntarily joined statewide association of business or

professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not hold the position of chief administrative law judge and may not be employed by the office in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings.

(c) A person may not hold the position of chief administrative law judge or act as the general counsel to the chief administrative law judge or the office if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the office, including a profession that is licensed by an agency for which the office is required to conduct administrative hearings.

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S.B. No. 1147

1 Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR
2 EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law
3 judge or the chief administrative law judge's designee shall
4 provide to office employees, as often as necessary, information
5 regarding the requirements for employment under this chapter,
6 including information regarding a person's responsibilities under
7 applicable laws relating to standards of conduct for state
8 employees.

9 SECTION 6. Section 2003.023, Government Code, is amended to
10 read as follows:

11 Sec. 2003.023. SUNSET PROVISION. The State Office of
12 Administrative Hearings is subject to review under Chapter 325
13 (Texas Sunset Act), but is not abolished under that chapter. The
14 office shall be reviewed during the periods in which state agencies
15 abolished in 2015 [~~2003~~] and every 12th year after 2015 [~~2003~~] are
16 reviewed.

17 SECTION 7. Section 2003.024, Government Code, is amended to
18 read as follows:

19 Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY
20 USAGE AND COST ESTIMATES. (a) If a state agency referred matters
21 to the office during any of the three most recent state fiscal years
22 for which complete information about the agency's hourly usage is
23 available and the costs to the office of conducting hearings and
24 alternative dispute resolution procedures for the [~~a~~] state agency
25 [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid
26 by appropriations to the office during a state fiscal biennium, the
27 office and the agency shall enter into an interagency contract for

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S.B. No. 1147

1 the biennium under which the referring agency pays the office, at
2 the start of each fiscal year of the biennium, a lump-sum amount to
3 cover the costs of conducting all hearings and procedures during
4 the fiscal year [~~a hearing or procedure~~]. The lump-sum amount
5 [~~costs~~] paid to the office under the contract must be based on:

6 (1) an hourly rate that is set by the office[~~—The~~
7 ~~office shall set the hourly rate for a biennium~~] in time for the
8 rate to be reviewed by the legislature as part of the legislature's
9 review of the office's legislative appropriations request for the
10 biennium; and

11 (2) the anticipated hourly usage of the office's
12 services by the referring agency for each fiscal year of the
13 biennium, as estimated by the office under Subsection (a-1).

14 (a-1) Before the beginning of each state fiscal biennium,
15 the office shall estimate for each fiscal year of the biennium the
16 anticipated hourly usage for each state agency that referred
17 matters to the office during any of the three most recent state
18 fiscal years for which complete information about the agency's
19 hourly usage is available. The office shall estimate an agency's
20 anticipated hourly usage by evaluating:

21 (1) the number of hours spent by the office conducting
22 hearings or alternative dispute resolution procedures for the state
23 agency during the three most recent state fiscal years for which
24 complete information about the agency's hourly usage is available;
25 and

26 (2) any other relevant information, including
27 information provided to the office by the state agency, that

suggests an anticipated increase or decrease in the agency's hourly usage of the office's services during the state fiscal biennium, as compared to past usage.

(a-2) If a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, the referring agency shall pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

(b) If the costs to the office of conducting hearings and alternative dispute resolution procedures for a state agency that refers matters to the office are anticipated to be [otherwise] paid by a lump-sum appropriation [appropriations] to the office for [during] a state fiscal biennium, the office shall timely provide to the legislature the information described by Subsection (c) [office and the agency shall enter into an interagency contract for each state fiscal year during the biennium under which the referring agency pays the office the costs for the number of hours spent by the office conducting hearings or alternative dispute

~~resolution procedures for the agency during the fiscal year that exceeds by 10 percent or more the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the state fiscal year that ended August 31, 1998. The costs paid under the contract must be based on an hourly rate that is set by the office. The office shall set the hourly rate for a biennium in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium].~~

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) [(1)] the salaries of its administrative law judges;

(B) [(2)] the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) [(3)] the administrative costs of the office, including docketing costs and the administrative costs of

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S.B. No. 1147

the division of the office that conducts the hearing or procedure.

(d) This section does not apply to hearings conducted:

(1) by the natural resource conservation division or the utility division; or

(2) under the administrative license revocation program.

SECTION 8. Section 2003.050, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The rules of the office regarding the participation of a witness by telephone must include procedures to verify the identity of the witness who is to appear by telephone.

SECTION 9. Subchapter C, Chapter 2003, Government Code, is amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056 to read as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the office;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

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S.B. No. 1147

1 (b) The office shall provide to the person filing the
2 complaint and to each person who is a subject of the complaint a
3 copy of the office's policies and procedures relating to complaint
4 investigation and resolution.

5 (c) The office, at least quarterly until final disposition
6 of the complaint, shall notify the person filing the complaint and
7 each person who is a subject of the complaint of the status of the
8 investigation unless the notice would jeopardize an undercover
9 investigation.

10 Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

11 (a) The chief administrative law judge or the chief administrative
12 law judge's designee shall prepare and maintain a written policy
13 statement that implements a program of equal employment opportunity
14 to ensure that all personnel decisions are made without regard to
15 race, color, disability, sex, religion, age, or national origin.

16 (b) The policy statement must include:

17 (1) personnel policies, including policies relating
18 to recruitment, evaluation, selection, training, and promotion of
19 personnel, that show the intent of the office to avoid the unlawful
20 employment practices described by Chapter 21, Labor Code; and

21 (2) an analysis of the extent to which the composition
22 of the office's personnel is in accordance with state and federal
23 law and a description of reasonable methods to achieve compliance
24 with state and federal law.

25 (c) The policy statement must:

26 (1) be updated annually;

27 (2) be reviewed by the state Commission on Human

1 Rights for compliance with Subsection (b)(1); and
2 (3) be filed with the governor's office.

3 Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief
4 administrative law judge or the chief administrative law judge's
5 designee shall provide to office employees information and training
6 on the benefits and methods of participation in the state employee
7 incentive program.

8 Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief
9 administrative law judge shall develop and implement a policy
10 requiring the chief administrative law judge and office employees
11 to research and propose appropriate technological solutions to
12 improve the office's ability to perform its functions. The
13 technological solutions must:

14 (1) ensure that the public is able to easily find
15 information about the office on the Internet;

16 (2) ensure that persons who want to use the office's
17 services are able to:

18 (A) interact with the office through the
19 Internet; and

20 (B) access any service that can be provided
21 effectively through the Internet; and

22 (3) be cost-effective and developed through the
23 office's planning processes.

24 Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The
25 chief administrative law judge shall develop and implement a policy
26 to encourage the use of alternative dispute resolution procedures
27 where appropriate to assist in the internal and external resolution

1 of disputes within the office's jurisdiction.

2 SECTION 10. Subchapter C, Chapter 2003, Government Code, is
3 amended by adding Section 2003.057 to read as follows:

4 Sec. 2003.057. HEARING TRANSLATOR. If a translator is
5 requested for all or part of a hearing conducted by the office, the
6 office shall provide an appropriate translator for that purpose.

7 SECTION 11. Section 51.305, Occupations Code, is amended to
8 read as follows:

9 Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the
10 respondent requests a hearing, the hearing shall be conducted by
11 the State Office of Administrative Hearings [~~department shall set a~~
12 ~~hearing and give written notice of the hearing to the respondent~~].

13 (b) The State Office of Administrative Hearings shall
14 consider the department's applicable substantive rules and
15 policies when conducting a hearing under this subchapter [~~The~~
16 ~~executive director may employ a hearings officer to conduct the~~
17 ~~hearing~~].

18 (c) An administrative law judge at the State Office of
19 Administrative Hearings [~~The hearings officer~~] shall:

20 (1) make findings of fact and conclusions of law; and

21 (2) promptly issue to the commission a proposal for
22 decision as to the occurrence of the violation and the amount of any
23 proposed administrative penalty.

24 SECTION 12. Subsection (a), Section 51.354, Occupations
25 Code, is amended to read as follows:

26 (a) A respondent is entitled to a hearing conducted by the
27 State Office of Administrative Hearings if the executive director

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S.B. No. 1147

proposes to deny, suspend, or revoke a license.

SECTION 13. Section 1802.203, Occupations Code, is amended to read as follows:

Sec. 1802.203. HEARING. ~~[(a)]~~ If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department shall refer the matter to the State Office of Administrative Hearings for a hearing on the disputed claim ~~[department's hearings examiner shall:~~

~~[(1) conduct a hearing on the claim in accordance with department rules; and~~

~~[(2) determine the amount owed to the aggrieved party].~~

~~[(b) A hearing on a claim may be conducted at the department's Austin office or at another location as provided by department rule.~~

~~[(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commissioner.]~~

SECTION 14. The heading to Section 1802.253, Occupations Code, is amended to read as follows:

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

SECTION 15. Subsection (a), Section 1802.253, Occupations Code, is amended to read as follows:

(a) Before denying an application for a license or suspending or revoking a license, the commissioner shall:

(1) set the matter for a hearing to be conducted by the State Office of Administrative Hearings; and

1 (2) before the 30th day before the hearing date,
2 notify the applicant or license holder in writing of:

3 (A) the charges alleged or the question to be
4 determined at the hearing; and

5 (B) the date and location of the hearing.

6 SECTION 16. Subsections (b) and (c), Section 51.354,
7 Occupations Code, are repealed.

8 SECTION 17. On September 1, 2003:

9 (1) all functions and activities performed by the
10 Texas Department of Licensing and Regulation that relate to
11 conducting administrative hearings at the department are
12 transferred to the State Office of Administrative Hearings;

13 (2) two full-time equivalent employee positions are
14 transferred from the Texas Department of Licensing and Regulation
15 to the State Office of Administrative Hearings to provide the
16 hearing services described in Sections 51.305, 51.354, 1802.203,
17 and 1802.253, Occupations Code, as amended by this Act. When
18 filling the two full-time equivalent employee positions, the State
19 Office of Administrative Hearings shall give first consideration to
20 an applicant employed as a hearings examiner or administrative
21 technician at the Texas Department of Licensing and Regulation;

22 (3) all property, including records, in the custody of
23 the Texas Department of Licensing and Regulation related to
24 providing administrative hearings under the former Sections
25 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes
26 the property of the State Office of Administrative Hearings, but
27 stays in the same physical location unless moved in accordance with

1 the plan created under Section 17 of this Act; and

2 (4) all funds appropriated by the legislature to the
3 Texas Department of Licensing and Regulation for purposes relating
4 to conducting administrative hearings under the former Sections
5 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are
6 transferred to the State Office of Administrative Hearings.

7 SECTION 18. The Texas Department of Licensing and
8 Regulation and the State Office of Administrative Hearings shall
9 establish a transition plan for the transfer described in Section
10 16 of this Act. The plan must include:

11 (1) a timetable for any necessary or advisable
12 movement of the physical location of property;

13 (2) an inventory of records and other property
14 required to be transferred; and

15 (3) a plan for continued support and cooperation the
16 Texas Department of Licensing and Regulation must provide the State
17 Office of Administrative Hearings to ensure an efficient transfer
18 of services and planning for future needs, including:

19 (A) an informational training session conducted
20 by the Texas Department of Licensing and Regulation for hearings
21 officers at the State Office of Administrative Hearings; and

22 (B) procedures for forwarding requests for
23 administrative hearings submitted to the Texas Department of
24 Licensing and Regulation to the State Office of Administrative
25 Hearings.

26 SECTION 19. (a) This Act takes effect September 1, 2003.

27 (b) The change in law made by this Act to Section 2003.024,

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S.B. No. 1147

1 Government Code, applies only in relation to the state fiscal
2 biennium beginning September 1, 2005, and any subsequent state
3 fiscal biennium.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1147 passed the Senate on April 16, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 24, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1147 passed the House, with amendment, on May 20, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 20, 2003

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, SD, GO, RT, JC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings function transferred to the office from the Texas Department of Licensing and Regulation.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 26, 2003

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1147 by Shapleigh (Relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would continue the State Office of Administrative Hearings until 2015. The bill transfers the administrative hearing functions of the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings. Based on the analysis of the State Office of Administrative Hearings, the Sunset Advisory Commission, and the Department of Licensing and Regulation, duties and responsibilities associated with implementing provisions of the bill could be accomplished by utilizing existing resources. The bill takes effect September 1, 2003.

Local Government Impact

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Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JK, GO, RT, JC

President of the Senate_____
Speaker of the House

I hereby certify that S.B. No. 1147 passed the Senate on April 16, 2003, by ~~a viva voce vote~~ by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 24, 2003, by a viva-voce vote. ~~by~~ Q the following vote: Yeas _____, Nays _____e

Secretary of the Senate

I hereby certify that S.B. No. 1147 passed the House, with amendment, on May 20, 2003, by a non-record vote. ~~by the following vote: Yeas _____, Nays _____, one present not voting~~ g

Chief Clerk of the House

Approved:

Date_____
Governor

S.B. No. 1147

By SHAPLEIGH

A BILL TO BE ENTITLED

AN ACT:

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

3-11-03

Filed with the Secretary of the Senate

MAR 17 2003

Read and referred to Committee on GOVERNMENT ORGANIZATION

Reported favorably _____

APR 08 2003

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

APR 16 2003

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent
____ years, ____ nays

APR 16 2003

Read second time, _____, and ordered engrossed by:

{ ~~unanimous consent~~
a viva voce vote
____ years, ____ nays

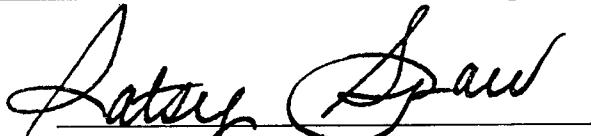
APR 16 2003

Senate and Constitutional 3 Day Rule suspended by a vote of 31 years, 0 nays.

APR 16 2003

Read third time, _____, and passed by:

{ ~~A viva voce vote~~
31 years, 0 nays


SECRETARY OF THE SENATE

OTHER ACTION:

April 16, 2003 Engrossed

April 16, 2003 Sent to House

Engrossing Clerk Mandi Alexander

APR 16 2003

Received from the Senate

APR 22 2003

Read first time and referred to Committee on Licensing & Administrative Procedures

MAY 06 2003

Reported ____ favorably (~~as amended~~) (~~as substituted~~)

MAY 09 2003

Sent to Committee on (Calendars) (~~Local & Consent Calendars~~)

MAY 19 2003

Read second time (~~as amended~~) (amended); passed to third reading (~~failed~~) by a (non-record vote) (~~record vote of ____ years, ____ nays, ____ present, not voting~~)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ____ years, ____ nays, ____ present, not voting.

MAY 20 2003

Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote) (~~record vote of ____ years, ____ nays, ____ present, not voting~~)

MAY 20 2003

Returned to Senate.


CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

MAY 20 2003

Returned from House with 1 amendments.

MAY 24 2003

Concurred in House amendments by a viva voce vote ____ years, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

03 MAY -9 AM 1: 23
HOUSE OF REPRESENTATIVES